

REMARKS / DISCUSSION OF ISSUES

Claims 1-17 and 19-21 are pending in the application.

The applicant respectfully requests the Examiner to acknowledge the claim for foreign priority and receipt of any certified copies of priority document(s) provided earlier or received from the International Bureau.

The Office action maintains the restriction requirement by withdrawing claims 16 and 17, and the applicant respectfully reiterates the traversal of this requirement. The applicant traverses the prior election requirement, and request the Examiner's attention to MPEP 803:

"If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, *even though it includes claims to independent or distinct inventions.*"

CRITERIA FOR RESTRICTION BETWEEN PATENTABLY DISTINCT INVENTIONS

There are *two* criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); *and*
- (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02)."

As is clear in this directive, an invention may be restricted to one of two or more claimed inventions, *only* if the search and examination of the entire application imposes a serious burden on the Examiner. Regardless of whether or not they should be considered separate inventions, Groups I and II are so closely related that the search and examination of the entire application can be made without serious burden. If the search and examination of the entire application can be made without serious burden, MPEP 803 states that the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

The Office action fails to provide support for the assertion that the examination of the entire application cannot be made without serious burden, and merely notes that the claims are drawn to embodiments having different classifications. The applicant respectfully notes that this is inconsistent with MPEP 803 "**Restriction - When proper**", because it addresses only the first of the **two** criteria that are **required** for a "proper requirement for restriction".

In view of MPEP 803, the applicant respectfully maintains that the restriction is not proper, and respectfully requests an examination of the entire application, as mandated by MPEP 803.

The Office action, dated 10 July 2007, raises an additional restriction of the claims. The Office action further restricts the application and requires an election by species. The Office action restricts the invention to one of the following species:

First species, drawn to FIGS. 1-11; and

Second species, drawn to FIG. 12.

In response, applicant elects, with traverse, to prosecute claims 1-7, 12, 13-15, and 19, directed to FIGS. 1-11.

The applicant disagrees with the assertion in the Office action that in the currently pending claims "none of the claims is generic." Each of the pending claims is dependent upon claim 1, and therefore claim 1 is common to all claims and must be generic.

The applicant requests the Examiner's attention to MPEP 808.01(a) "**Species**" which clearly states:

"A requirement for restriction is permissible if there is a patentable difference between the species as claimed and **there would be a serious burden on the examiner if restriction is not required.**"

The Office action fails to provide support for the requirement that the examination of the entire application cannot be made without serious burden to the examiner. The applicant respectfully maintains that FIGS. 1-11 and FIG. 12 are so closely related that the search and examination of the entire application can be made without serious burden.

Withdrawal of the restriction requirements and examination of the application on its merits are respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

/Robert M. McDermott/
Robert M. McDermott
USPTO Reg. No. 41,508
804-493-0707

Please direct all correspondence to:
Philips IP&S
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9635
Fax: (914) 332-0615